proved can easily be established without the document, its production may be dispensed with. Where, on the other hand, proof without the document would be difficult and unsatisfactory, the court will require it in evidence.

THE DEFENSE OF COMMON EMPLOYMENT. — The rule that a servant cannot recover damages from his master for injuries received through the negligence of a fellow servant has usually been supported on the theory of assumption of risk. A servant is regarded as impliedly contracting to assume all the ordinary risks incident to his employment, and the chance of injury from his fellow servants is said to be one of these risks.[1] A recent Georgia case in holding that it was error to enter a non-suit on the ground that the injury done to the plaintiff, a minor, was caused by the negligence of a fellow servant, suggests that the general doctrine should not apply where the injured party is of such a tender age that he cannot be presumed to have understood or assumed this risk. *Evans* v. *Josephine Mills*, 46 S. E. Rep. 674.

If the defense of common employment is in fact based on the doctrine of assumption of risk, the limitation upon that defense which the court suggests, seems to follow of necessity, since it is well established law that a minor cannot be held to assume dangers which his undeveloped faculties are unable to perceive.[2] There is, moreover, some authority in accord with this view.[3] At least an equal number of decisions, however, reach a contrary result, on the ground that the fellow-servant rule is to be applied alike to adult and minor.[4] And in many cases where the express point is not decided the language of the court leads inevitably to the same conclusion.[5] When authority is in such conflict, it may be of service to examine the grounds on which the general doctrine is founded.

By the doctrine of *respondeat superior* the master is unquestionably liable for an injury to a third party occasioned by the negligence of one of his servants. Why that doctrine should not equally apply when the injured party happens to be another servant of the same master is by no means clear. Nor can it be wholly explained by saying that the servant assumes the risk, for why should he be regarded as assuming the risk of the negligence of another servant any more than the negligence of his master?[6] Confronted with these difficulties, many judges have admitted the impossibility of finding a satisfactory explanation of the rule, and have regarded it as an exception to the theory of *respondeat superior* arising from the necessity of the case,[7] and sanctioned by public policy.[8] Perhaps the obvious helplessness of the master in preventing such injuries among his servants, and the consequent hardships of throwing on him the burden of being their insurer, influenced the courts in adopting the rule.

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[1] Farwell *v.* Boston & W. R. Co., 4 Met. (Mass.) 49; Bartonshill Coal Co. *v.* Reid, 3 Macq. H. L. Cas. 266.

[2] Kehler *v.* Schwenk, 151 Pa. St. 505.

[3] Hinkley *v.* Horazdowsky, 133 Ill. 359.

[4] Craven *v.* Smith, 89 Wis. 119.

[5] Fiske *v.* Central Pacific R. Co., 72 Cal. 38; King *v.* Boston & W. R. Co., 9 Cush. (Mass.) 112.

[6] See dissenting opinion in Crispin *v.* Babbitt, 81 N. Y. 516.

[7] Crispin *v.* Babbitt, *supra*.

[8] Rogers *v.* Ludlow M'f'g Co., 144 Mass. 198; Louisville & M. R. Co. *v.* Lahr, 66 Tenn. 335.

Certain it is that the want of it was widespread, for the doctrine sprang up suddenly and almost simultaneously both in England[9] and America.[10] Taking public policy as the basis of the rule, it is hard to see how its arguments are rendered less cogent by the fact that the injured servant is a child of tender years. The Georgia case may be taken, however, as an illustration of the growing tendency in this country to restrict the operation of the fellow-servant rule.[11]

"VALUE" IN THE LAW OF NEGOTIABLE INSTRUMENTS. — Value sufficient to cut off equities is much the same in the law of negotiable instruments as it is in the law governing any other property. One who pays the purchase price, even though it is less than the face value, is a purchaser for value and entitled to recover the full face value of the instrument,[1] though some courts indeed hold that the purchaser can recover only as much as he has paid.[2] If, however, a partial payment only is made before notice, the holder may recover only so much as he has paid before such notice.[3] This is codified in the Negotiable Instruments Law.[4] A recent New York decision under this provision holds correctly that a bank, discounting a note and crediting the purchase price to the account of the transferrer, but receiving notice of an equity before it is drawn upon, is not a purchaser for value. *Albany Co. Bank* v. *Peoples', etc., Co.*, 30 N. Y. L. J. 2023 (N. Y. Sup. Ct., App. Div.). If the consideration given by the purchaser consists in a negotiable instrument which has already been negotiated, such purchaser would be a purchaser for value.[5] The same should be true even though the instrument given as consideration is not yet negotiated, unless its surrender is procured by the defendant, the maker of the first instrument, to prevent future negotiation. If it is already matured in the hands of the transferrer, since any subsequent holder of it would then take subject to all equities, the purchaser should not be deemed a purchaser for value.

A very material difference between negotiable paper and other property exists, however, in case of a transfer in payment of, or as security for, an antecedent debt. By the decided weight of authority a transfer of negotiable paper in payment of an antecedent debt is a transfer for value.[6] A common law consideration, by means of which to predicate value to the transferrer, was at first found, where the paper was payable at a future date, in the forbearance to sue on the old obligation until that date. This is, however, obviously lacking where the paper is payable on demand. The English case of Currie *v.* Misa[7] settled the matter by holding that the consideration consists, not in the forbearance to sue, but rather in the extinction of the old debt, which revives upon default of the instrument taken. In the case of a transfer as security, however, the New York case of Stalker *v.* McDonald,[8] held there was no transfer for value, and such is the weight of authority at

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[9] Priestley *v.* Fowler, 3 M. & W. 1.
[10] Murray *v.* S. C. R. Co., 1 McMull (S. C.) 385.
[11] Parker *v.* Hannibal & St. J. R. Co., 109 Mo. 362, 397.

[1] Lay *v.* Wissman, 36 Ia. 305.
[2] Holcomb *v.* Wyckoff, 35 N. J. 35.
[3] Dresser *v.* Railway Construction Co., 93 U. S. 92.
[4] Art. IV. § 54.
[5] Adams *v.* Soule, 33 Vt. 538.
[6] Swift *v.* Tyson, 16 Pet. (U. S.) 1.
[7] L. R. 10 Ex. 153.
[8] 6 Hill (N. Y.) 93.